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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re M.R., a Person Coming
Under the Juvenile Court Law.

B289980
(Los Angeles County
Super. Ct. No.
18CCJP01564)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

MICHELLE F.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Rudolph A. Diaz, Judge. Affirmed in part, reversed in part and remanded.

William Hook, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Acting Assistant County Counsel, and Stephen D. Watson,
Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Michelle F. (mother) appeals from orders of the juvenile court. Mother contends there was insufficient evidence to support finding jurisdiction over the child pursuant to Welfare and Institutions Code¹ section 300, subdivision (b)(1). She further contends the court erred by not finding P.R., her husband, was the presumed father of the child under Family Code section 7611, subdivision (d). Finally, she challenges the court's order removing the child from her custody pursuant to section 361, subdivision (c)(1), and order that her visits with the child to be monitored. We affirm the jurisdiction finding and conclude the trial court did not err in denying P.R. status as a presumed father. We reverse the disposition order removing the child from mother's custody and remand for a new disposition hearing.

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise noted.

II. BACKGROUND

A. *Referral and Detention Report*

On March 4, 2018, at 8:00 a.m., the three-year-old child, M.R., was unresponsive and transported by ambulance to a hospital. Mother called 911 because she thought the child had a seizure, although she did not witness it. A urine test of the child came back positive for marijuana.

The child has a history of seizure disorders, and suffered a seizure in February 2018. He also has a genetic disorder called Lesch Nyhan, which renders him unable to properly break down deoxyribonucleic acid. The child received occupational and physical therapy at a regional center. The child is wheelchair bound, cannot feed himself, and has a gastrointestinal tube (G-tube), seizures, kidney disease, and cerebral palsy.

On March 5, 2018, the Los Angeles County Department of Children and Family Services (Department) received a referral regarding the child. Social worker Whitehurst interviewed mother that day. Mother stated she and the child were visiting her boyfriend P.R. in Pomona for the weekend, and were staying at a hotel. It was too cold to smoke marijuana outside, so she and P.R. smoked marijuana in their room, believing that smoking marijuana in the child's presence would not affect him. This was the first time she had smoked marijuana in the child's presence. When Whitehurst asked if she and P.R. were under the influence, mother laughed. Mother informed Whitehurst that there had been at least one domestic violence incident between her and P.R. but that she had not reported it to the police.

On March 7, 2018, Whitehurst spoke with social worker Turner, who was working with mother in connection with a prior referral. Mother informed Turner on March 2, 2018, that she was homeless because P.R. kept mother's rent money and turned in the hotel room keys to the manager without mother's knowledge.

Mother reported to Whitehurst that she has been diagnosed with depression and bipolar disorder. Mother was prescribed Zoloft and Seroquel, but stopped taking the medication in December 2017, when she found out she was pregnant. Mother stated the child's positive urine test for marijuana may have been due to the child inhaling second hand smoke from her and her boyfriend, who smoked marijuana in a small room. Mother would not provide Whitehurst with a name for the child's father and stated that the child had no father.

B. Section 300 Petition and Detention Hearing

On March 9, 2018, the Department filed a petition seeking jurisdiction over the child pursuant to section 300, subdivision (b)(1). The Department alleged in count b-2 that mother had a history of substance abuse and was a current abuser of marijuana, which rendered her incapable of providing regular care and supervision for the child.² The Department asserted that there was substantial danger to the physical or emotional health of the child and there was no reasonable means by which to protect the child's physical or emotional health without removing the child from mother's physical custody.

² Count b-1 was stricken at the jurisdiction and disposition hearing.

On March 12, 2018, the juvenile court held a detention hearing and found a prima facie case to detain the child. The child was ordered released to maternal aunt's home after mother moved out. Based on a parentage questionnaire submitted by mother on March 12, 2018, the court found Robinson R. to be the alleged father of the child.

C. Jurisdiction/Disposition Report

On April 3, 2018, social worker Odunze interviewed mother. Mother told Odunze that in March 2018, she and P.R. had smoked marijuana in the bathroom of their hotel room and tried to keep the door closed. Mother denied telling Whitehurst that she had smoked marijuana in the same room as the child. Mother denied being an abuser of marijuana. Mother received a negative toxicology screen test for marijuana on March 14, 2018. Odunze opined that the negative test on March 14, 2018, was highly suspicious in light of mother's admission that she smoked marijuana 10 days earlier and marijuana typically remains in a user's system for 30 days. Mother was pregnant and due to give birth in July 2018. Mother did not believe her marijuana use endangered the child, stating that her marijuana usage had never affected how she took care of the child.

Odunze spoke with a doctor regarding the child's toxicology test. The doctor stated that the child's test result indicated the child had not been exposed to marijuana. The doctor advised that the child's initial urine test was a false positive. The child remained detained at the hospital or in shelter care as of April 9, 2018. From April 11, 2018 through April 23, 2018, the

child was detained in shelter care under the Department's supervision through the disposition hearing.

D. P.R.'s Statement Regarding Parentage

On April 11, 2018, P.R. filed Judicial Council Form JV-505, Statement Regarding Parentage. P.R. asserted he married mother on February 28, 2018; believed he was the child's parent; and had participated in the child's school, therapy, and appointments when possible. P.R. indicated that the child lived with him from November 2017 to January 2018, and from February 2018 to March 7, 2018. P.R. further indicated that he told his family, friends, and others at the hospital that he was the child's father. P.R. stated he had given the child clothes, food, shelter, love, and gifts. P.R. maintained that he was the only father figure the child knew.

On April 13, 2018, P.R. filed a second Statement Regarding Parentage that contained the same information as the first. Further, P.R. noted that he had cared for the child since the child was one and a half years old.

E. First Amended Section 300 Petition

The Department filed a report that on April 18, 2018, after a hearing, mother reportedly broke the glass window on the door of the juvenile courtroom. Surveillance video depicted mother and a man walking away from the smashed window. Mother's knuckle appeared to be bleeding. The Department concluded the incident was the result of mother's unresolved mental health issues.

On April 20, 2018, the Department filed a first amended petition adding counts b-3 and b-4. The Department alleged in count b-3 that on September 21, 2017, mother had been transported by ambulance to a medical center and placed on a 72-hour hold pursuant to section 5150, following an altercation on a bus. In count b-4, the Department alleged mother had mental and emotional problems but failed to take her prescribed medications, including Zoloft and Seroquel, and failed to obtain recommended mental health treatment to mitigate the risk associated with her mental health problems. The Department alleged that mother's mental and emotional problems endangered the child's safety, placed the child at risk of serious physical harm, and constituted a failure to protect. The Department recommended that the child be removed from mother's custody and suitably placed.

F. April 25, 2018, Last Minute Information

On April 26, 2018, the Department interviewed mother regarding her September 2017, 72-hour involuntary hold. Mother stated she was actually held for a week and believed the longer stay resulted from two prior section 5150 holds. She explained that she had an outburst on a bus and when the driver asked her to leave, she refused and told him to call the police if he wanted. Mother did not know if her outburst on the bus was because of her mental health issues, but knew it was only a matter of time until something like that happened.

Regarding her medication, mother explained she had been prescribed Zoloft and Seroquel in March 2017. She stopped taking Seroquel about two or three weeks before the incident on

the bus. She did not know why she chose to stop taking Seroquel, but she continued to take Zoloft until December 2017, when she found out that she was pregnant. Mother added that she had previously been prescribed psychotropic medication when she was younger, but stopped taking her prescribed medication when she was 18 years old. Mother was recently prescribed Latuda for mood swings and irritability, and stated she would begin to use the medication soon.

Mother claimed to be seeing a therapist and psychiatrist. She did not believe her emotional and mental problems endangered her child's physical health and safety because such problems were not new in her life.

Mother smoked marijuana to help her sleep, to increase her appetite, and to keep food down.

G. Jurisdiction and Disposition

On April 27, 2018, mother filed a parentage questionnaire indicating that P.R. received the child into his home and held him out as his own. However, P.R. was not present at the child's birth, did not sign the birth certificate, and was not married to mother when the child was born. At the April 27, 2018, hearing, mother requested P.R. be found the child's presumed father. The juvenile court denied mother's request.

The juvenile court expressed doubts about P.R. and mother's credibility. Contrary to P.R.'s declaration, the court found P.R. was not significantly involved in the child's life. It noted that the amount of time P.R. claimed to have lived with the child—from November 2017 to January 2018 and from February 2018 to March 7, 2018—was “not that significant.”

Further, the juvenile court concluded that other evidence contradicted P.R.'s statement that he had resided with the child even during these short periods of time. Specifically, the court noted that according to mother, she was *visiting* P.R. in Pomona from March 2 to 4.

The juvenile court also noted P.R.'s marijuana use in the presence of the child. The court concluded that it would not be in the best interest of the child to find P.R. a presumed father.

On May 4, 2018, P.R. filed a De Facto Parent Request, asserting that he was the father of the child. P.R. asserted that he had extensive knowledge of the child's medical condition, medication routine, physical therapy schedule, and speech therapy routine, and medical training to care for the child's G-tube. The juvenile court declined to make any further findings as to P.R.'s parentage request.

Also on May 4, 2018, the juvenile court conducted the jurisdiction hearing. Following the hearing, the court sustained the section 300 petition as to counts b-2, b-3, and b-4. The child was declared a dependent of the court. The court ordered the child removed from mother's custody, and placed with maternal aunt. The court also ordered that mother receive reunification services and monitored visits, and granted the Department discretion to liberalize the visits to be unmonitored.

III. DISCUSSION

A. Substantial Evidence Supports Dependency Jurisdiction

Mother contends there was insufficient evidence to support jurisdiction over the child pursuant to section 300,

subdivision (b)(1). “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We will focus our discussion here on count b-3, which alleged that mother had been subject to a psychological hold, and count b-4, which alleged that mother failed to take medications to mitigate her mental illness.

A parent’s mental illness, without more, is insufficient to find the child has been or will be harmed. (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1226; *In re A.G.* (2013) 220 Cal.App.4th 675, 684.) Here, the record demonstrates that mother was not only mentally ill, but had failed to take adequate steps to treat her mental illness, was placed in a psychological hold, and put her child at risk of harm. Mother had a history of psychiatric holds, yet she stopped taking her prescribed psychotropic medications during several periods of time. Mother admitted to using marijuana in lieu of the psychotropic medications to help her appetite. She further described the involuntary hold following the bus incident as “only a matter of time.” Mother also purportedly broke a window of the juvenile dependency courtroom, indicating that her mental health issues were not treated. Although mother stated she would begin taking prescribed medication again, the record does not indicate mother had begun to do so by the time of the jurisdiction and disposition hearing. Mother has also stated that her mental and emotional problems did not place the child at risk of serious physical harm because her problems were not new. As mother is the child’s

primary caregiver, there is substantial risk that her being placed on involuntary holds could render her unable to provide regular care for the child. There is also a substantial risk that the child would be exposed to the risk of physical harm or illness due to mother's failure to adequately treat her mental illness. (See *In re Travis C.*, *supra*, 13 Cal.App.5th at p. 1227 [substantial evidence in support of finding jurisdiction due to "[m]other's illness and choices creat[ing] a substantial risk of *some* serious physical harm or illness"].) We conclude substantial evidence supports the juvenile court's jurisdictional finding.

B. Juvenile Court Did Not Err by Not Finding P.R. was Presumed Father

Mother asserts the juvenile court erred by failing to find P.R. was the presumed father pursuant to Family Code section 7611, subdivision (d). Mother asserts that P.R. should have been found the presumed father based on his declaration that he held the child out as his own and received the child into his home. A person is presumed to be a natural parent of a child if "[t]he presumed parent receives the child into his or her home and openly holds out the child as his or her natural child." (Fam. Code, § 7611, subd. (d).)

As a preliminary matter, mother may not have standing to appeal this issue. "Generally, a parent who is aggrieved by an order after judgment in a juvenile dependency proceeding may take an appeal from that order. [Citation.] "To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court's decision. A nominal interest or remote consequence of the ruling does not

satisfy this requirement.’ [Citation.] The mere fact that a parent takes a position on an issue in a dependency case does not alone constitute a sufficient basis on which to establish standing to challenge an adverse ruling on the issue. [Citation.] Issues which do not affect the parent’s own rights may not be raised in the parent’s appeal.” (*In re Holly B.* (2009) 172 Cal.App.4th 1261, 1265; accord, *In re T.G.* (2010) 188 Cal.App.4th 687, 692.) Here, mother’s aggrieved status is at best attenuated. The trial court’s conclusion that P.R. was not the presumed father of the child does not appear to injuriously affect *mother’s* relationship with the child.

Even assuming mother is an aggrieved party, the juvenile court did not err by concluding P.R. was not the presumed father. “[W]here the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528; *In re Luis H.* (2017) 14 Cal.App.5th 1223, 1226-1227 [applying above standard of review to a dependent’s challenge to a juvenile court’s finding of no jurisdiction].)

“There are no specific factors that a trial court must consider before it determines that a parent has ‘received’ a child into the home and has established a parental relationship. ‘In determining whether a man has “receiv[ed a] child into his home and openly h[eld] out the child” as his own [citation], courts have looked to such factors as whether the man actively helped the

mother in prenatal care; whether he paid pregnancy and birth expenses commensurate with his ability to do so; whether he promptly took legal action to obtain custody of the child; whether he sought to have his name placed on the birth certificate; whether and how long he cared for the child; whether there is unequivocal evidence that he had acknowledged the child; the number of people to whom he had acknowledged the child; whether he provided for the child after it no longer resided with him; whether, if the child needed public benefits, he had pursued completion of the requisite paperwork; and whether his care was merely incidental.” (*W.S. v. S.T.* (2018) 20 Cal.App.5th 132, 145-146; *In re T.R.* (2005) 132 Cal.App.4th 1202, 1211.) “A father is not elevated to presumed father status unless he has demonstrated a ‘commitment to the child and the child’s welfare . . . regardless of whether he is biologically the father.’” (*W.S. v. S.T.*, *supra*, 20 Cal.App.5th at p. 143; *In re T.R.*, *supra*, 132 Cal.App.4th at p. 1212.) We find the evidence does not compel a finding that P.R. is the presumed father, as a matter of law.

The trial court expressly questioned the credibility of P.R.’s statements. Further, P.R. did not participate in the April 23, 2018, Individualized Family Service Plan or the July 6, 2017, Individualized Education Program for the child, and the November 2017 Individual Program Plan identifies P.R. as mother’s boyfriend, not the child’s father. Also, although P.R. claimed in his April 13, 2018, statement regarding parentage that he had cared for the child since the child was one and a half years old, this was inconsistent with P.R.’s earlier April 11, 2018, declaration that he had resided with the child for one- or two-month periods, which the juvenile court found were “not that significant.” Additionally, evidence in the record indicates that

P.R. smoked marijuana with mother in the same hotel room as the child, potentially exposing the child to marijuana inhalation. Mother stated that P.R. had withheld her rent money and turned in the keys to a hotel room without mother's consent, rendering her and the child homeless. Finally, mother stated P.R. engaged in domestic violence with her while she was pregnant. Such conduct supports a conclusion that P.R. was not committed to the child and the child's welfare. "If an individual can qualify for presumed father status based on his good deeds consistent with parental responsibilities, it follows that under certain circumstances he can be disqualified by repugnant conduct that is detrimental to the child." (*In re T.R.*, *supra*, 132 Cal.App.4th at p. 1212.) Accordingly, the juvenile court did not err by finding that P.R. was not a presumed father under Family Code section 7611, subdivision (d).

C. *Substantial Evidence Does not Support Juvenile Court's Order Removing Child from Mother's Custody*

Mother also contends the juvenile court erred by removing the child from her custody. "A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians, . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed . . . : [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's

parent's [or] guardian's . . . physical custody." (§ 361, subd. (c)(1).) "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.' [Citation.] The court may consider a parent's past conduct as well as present circumstances." (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170; accord, *In re T.V.* (2013) 217 Cal.App.4th 126, 135-136.) An order removing a child from parental custody is reviewed to determine if it is supported by substantial evidence. (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 451; *In re A.E.* (2014) 228 Cal.App.4th 820, 825-826.)

We find the removal order not supported by substantial evidence. Although the Department argues that the jurisdiction findings made by the juvenile court are sufficient to support removal, the legal standard for finding jurisdiction over the child is not the same as the one for removing the child from an offending parent's custody. (*In re Ashly F.* (2014) 225 Cal.App.4th 803, 811; *In re Henry V.* (2004) 119 Cal.App.4th 522, 531.) We normally look to the facts cited by the juvenile court for why alternatives to removal were insufficient; and recitation of these facts is required by statute. (§ 361, subd. (e) ["The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home The court shall state the facts on which the decision to remove the minor is based"].) Here, however, the juvenile court provided no explanation for its removal order or its reasonable efforts findings. The Department stated it had provided the following services as "[r]easonable [e]fforts" to prevent or eliminate the need to remove the child from mother's custody: monitor and maintenance of appropriate placement of

the child; family reunification services; efforts to locate Robinson R.; drug testing referrals for mother; appropriate referrals for services, including mental health services, for mother; a visitation schedule; and voluntary family maintenance services. The record, however, does not demonstrate whether the reasonable efforts provided were unsuccessful in preventing or eliminating the need to remove the child from mother. The record also does not indicate why other reasonable means to protect the child's physical health were unavailable.

Accordingly, we will reverse the disposition order removing the child from mother's custody. Due to the absence of evidence in the record, we find the appropriate remedy is for the juvenile court to hold a new disposition hearing and to undertake the fact finding required by section 361, subdivision (e) before removal is appropriate. (See *In re Abram L.* (2013) 219 Cal.App.4th 452, 463 [when express finding required, remand for juvenile court to make such findings appropriate].) Because we reverse the order removing the child from mother's custody and remand for a new disposition hearing, we need not address mother's argument that the juvenile court abused its discretion by ordering monitored visits.

IV. DISPOSITION

The jurisdiction finding is affirmed. The order removing the child from mother's custody is reversed and the matter is remanded for a new disposition hearing.

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KIM, J.

We concur:

BAKER, Acting P.J.

MOOR, J.